

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
JAMES RUSSELL BERG and PATRICIA JO)
BERG,)
Complainants,)
)
vs.)
)
PRINCEVILLE UTILITIES COMPANY,)
INC.,)
Respondent.)
_____)

DOCKET NO. 04-0330

ORDER NO. 21496

Filed Dec. 17, 2004
At 2:30 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

2004 DEC 20 A 8:18

RECEIVED

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)	
JAMES RUSSELL BERG and PATRICIA JO)	Docket No. 04-0330
BERG,)	
Complainants,)	Order No. 21496
vs.)	
PRINCEVILLE UTILITIES COMPANY,)	
INC.,)	
Respondent.)	
_____)	

ORDER TO SATISFY OR ANSWER COMPLAINT

I.

Formal Complaint

On November 15, 2004, JAMES RUSSELL BERG and PATRICIA JO BERG (collectively, "Complainants") filed a formal complaint with the commission against PRINCEVILLE UTILITIES COMPANY, INC. ("Respondent"), pursuant to Hawaii Administrative Rules ("HAR") chapter 6-61, subchapter 5. A copy of the formal complaint, with attachments, is attached hereto as Exhibit 1.

Respondent is a provider of water utility service in the service area of Princeville, island of Kauai, State of Hawaii. Complainants are consumers of Respondent's water utility service.

Complainants allege that: (1) Respondent violated the Agreement, dated April 29, 1997 (the "Agreement"), when Respondent transferred a contribution-in-aid-of-construction ("CIAC") credit/meter fee waiver, from Lot 10, Unit A, of the

Anini Vista Estates Subdivision, to Lot 5, Unit C; and (2) in the alternative, should the commission find that said transfer was permissible, Respondent failed to amend and record changes to said Agreement. Complainants seek commission action requiring Respondent "to refund the CIAC fee we paid (\$12,707)."¹

Based on the commission's review of the formal complaint and Respondent's tariff rules, the formal complaint appears to implicate Respondent's tariff Rule XXVI, "Contribution-in-Aid-of-Construction." The commission finds that the formal complaint appears to substantially comply with the applicable procedures set forth in chapter 6-61, subchapter 5, governing the filing of formal complaints with this commission. Thus, pursuant to HAR §§ 6-61-67 and 6-61-68, the commission finds that Respondent should either: (1) satisfy the matters complained of and file an answer reporting that it has satisfied the matters raised in the complaint; or (2) file an answer to the formal complaint within twenty (20) after the date of service of this Order.

By issuing this Order directing Respondent to answer the formal complaint, the commission, by said action, is not ruling on the merits of the formal complaint at this juncture. Instead, the commission finds that: (1) the formal complaint appears to substantially comply with the applicable procedures set forth in chapter 6-61, subchapter 5, governing the filing of formal complaints; accordingly (2) Respondent must file a

¹Formal complaint, at 3.

response thereto, as part of the commission's procedures governing the processing of formal complaints.

II.

Orders

THE COMMISSION ORDERS that Respondent shall either:
(1) satisfy the matters complained of and file an answer reporting that it has satisfied the matters raised in the complaint; or (2) file an answer to the formal complaint within twenty (20) days after the date of service of this Order.

DONE at Honolulu, Hawaii DEC 17 2004.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By Wayne H. Kimura
Wayne H. Kimura, Commissioner

By Janet E. Kawelo
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

Catherine P. Awakuni
Catherine P. Awakuni
Commission Counsel

04-0330.eh.

CERTIFICATE OF SERVICE

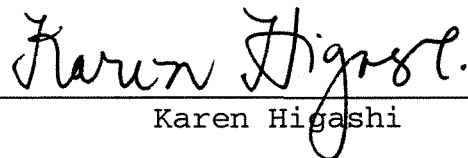
I hereby certify that I have this date served a copy of the foregoing Order No. 21496 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

JAMES RUSSELL BERG
PATRICIA JO BERG
P. O. Box 223504
Princeville, Kauai, HI 96722

PRINCEVILLE UTILITIES COMPANY, INC.
P. O. Box 223040
Princeville, Kauai, HI 96722

OSHIMA CHUN FONG & CHUNG LLP
841 Bishop Street
Davies Pacific Center, Suite 400
Honolulu, HI 96813



Karen Higashi

DATED: DEC 17 2004

FILED

2004 NOV 15 A 11:35

PUBLIC UTILITIES
COMMISSION

November 10, 2004

State of Hawaii
Public Utilities Commission
465 S. King Street, #103
Honolulu, Hawaii 96813

04 - 0330

Re: Formal Complaint Against Princeville Utilities Company, Inc. (PUCI)

To Whom It May Concern:

This letter is in response to a letter from Mr. Nathan Kawakami, PUC Assistant, to us dated October 6, 2004 (Attachment 1). That letter stated, "It appears the Commission is unable to resolve this matter within the context of the informal complaint process". Our informal complaint has been identified as IC-04-0122 (Attachment 2). We are, therefore, requesting that this letter constitute our formal complaint. We have reviewed Hawaii Administrative Rules, Title 6, Chapter 61, Subchapter 5, and believe this notification complies with your requirements under the rules.

Complainant:

James Russell Berg
P.O. Box 223504 (Mailing Address)
4362 Emmalani Drive (Street Address)
Princeville, HI 96722

Patricia Jo Berg
P.O. Box 223504 (Mailing Address)
4362 Emmalani Drive (Street Address)
Princeville, HI 96722

Respondent:

Princeville Utilities Company, Inc.
P.O. Box 223040
Princeville, HI 96722d

Complaint:

At issue is (1) whether Princeville Utilities Company, Inc. (PUCI) violated their April 27, 1997, Agreement (Attachment 3), when they transferred a CIAC credit/meter fee waiver from Lot 10, Unit A of Anini Vista Estates Subdivision to Lot 5, Unit C and, (2) should the Commission find that the transfer was permissible, we believe that PUCI was negligent when they failed to amend and record changes to the Agreement. This Agreement was recorded by the Bureau of Conveyances on May 2, 1997. The Agreement has been referred to as the "Weinberg Agreement".

Background:

In October 1999, we began negotiating for the purchase of Anini Vista Lot 10, Unit A. We were told that Unit A would not be required to "purchase" a water meter hookup, as the

Page Two

developer had paid for one hookup per lot as a CIAC. On Lot 10, that meter fee waiver had been assigned by the developer to Unit A. In addition, we were provided a copy of the Weinberg Agreement during the escrow disclosure process. This Agreement specifies that each Anini Vista Subdivision lot (Nos. 1, 2, 3, 4, 5, 7, 8, 9 and 10) was to have one Source Assessment Fee and one Storage Assessment Fee "based upon one (1) allowable dwelling unit on each of the said lots", paid for by the Landowner as a Contribution in Aid to Construction (CIAC)". The Agreement further states, "As a material condition of this Agreement, the parties understand and agree that the source assessment fee and storage assessment fee assessed herein by PUCI and to be paid by Landowner are calculated on the basis of providing water service to only one (1) dwelling unit for each of said lots. This restriction shall run with the land and Landowner or its successor and assigns shall clearly note such restriction on all documents relative to the ownership, transfer, or assignment of said lots, including any deeds or related documents." The statement, "This restriction shall run with the land" makes it clear that the Agreement's intent is to allow only one (1) CIAC waiver per lot and that no changes should be made. The documentation provided in the Weinberg Agreement corroborated our verbal understanding concerning the water fee waiver attached to Lot 10, Unit A.

In August 2004, we called PUCI to have them begin water service to our Lot 10, Unit A. At that time, we were told the water meter fee waiver we thought was attached to Lot 10, Unit A had been transferred by them to Lot 5, Unit C. This was done on the basis of an October 4, 1999 letter to PUCI from the individual who sold us Lot 10, Unit A (Attachment 4). Although we contested this transfer and told PUCI they had violated their Agreement, we paid the CIAC fee of \$12,707 (Attachment 5).

PUCI's statements to us during our discussions about the transfer indicated that this was a highly unusual request by a unit owner. They had not encountered such a request before. Nevertheless, they decided to make the transfer because the individual making the request owned both units. A review of the Weinberg Agreement, which was not done, should have dissuaded them from making the transfer, as the Agreement specifies that Lot 10 should have a CIAC credit. At the very least, if they wished to accommodate a unit owner, they needed to amend the Agreement. Since the Agreement was a legal document, recorded and in the public domain, they were remiss in failing to amend and record any changes to the Agreement. Had this been done, we would have known before we closed escrow that Lot 10 no longer had a water meter fee waiver.

As stated in PUCI's response (Attachment 6) to our informal complaint, the CIAC credit was assigned to a specific unit within each lot by the "developer" (Attachments 7 and 8). How then could any transfer be made based on the request of a "unit owner", with no approval of, or notification to, the "developer"? The Agreement contemplates that additional water hookups would be required as lots were condominiumized. After one credit is allowed per lot, all others on the lot would be required to pay for their own meters. Clearly, PUCI violated their Agreement by allowing two (2) waivers for Lot 5 and none for Lot 10.

Although Lot 10 was later subdivided (condominiumized) into five units (A, B, C, D and E), there is nothing in the Agreement which authorizes a "unit" owner to transfer a fee waiver from one "lot" to another. We disagree with PUCI's statement that, "Because the Weinberg Agreement contemplated that additional water hookups would be required as

Page Three

lots were condominiumized, a lot owner had the right to designate to which lot a CIAC credit would apply". There is no justification for this statement in any documentation and it directly contradicts the Agreement which specifies only one allowable waiver per lot. Furthermore, PUCI's transfer was made on the request of a "unit owner", not a "lot owner". PUCI is confusing a "lot owner" with a "unit owner". Therefore, PUCI's position cannot be supported using their own logic.

Rather than addressing the serious nature of our complaint and their involvement in the situation, PUCI raises the issue of improper disclosure by the seller/agent. PUCI states that any redress related to the CIAC credit should be between us and individuals involved in the sale of the property. This statement has no bearing on the issue of their inappropriate transfer and appears to be an attempt to "pass the buck". While we believe the seller/agent did not adequately disclose the transfer of the credit to us, we are not trying to recover the CIAC credit twice. We seek only to be made whole. We are prepared to provide you additional information relative to this issue if you believe it would be helpful to your review. However, after careful consideration, we have concluded that since the source of the problem is an action by PUCI, that is where redress should be provided.

Relief Desired:

We find PUCI's action to be in violation of their own Agreement and their response to our informal complaint to be without merit. Since the Commission has regulatory oversight of the activities of PUCI, we request the Commission to require them to refund the CIAC fee we paid (\$12,707).

We would appreciate the Commission's review of our formal complaint. Please let us know if you require any additional information. To facilitate your review, we have included our telephone number below. Thank you for your help and attention to this matter.

Sincerely,



James and Patricia Berg
(808) 826-7805

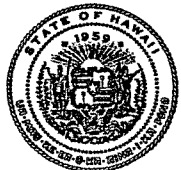
cc: Consumer Advocate - PUC

Attachments:

- 1 - PUC Letter to Us
- 2 - Informal Complaint
- 3 - Weinberg Agreement
- 4 - Owner's Request to Transfer Waiver
- 5 - Our Receipt for the CIAC Fee
- 6 - Letter from PUCI to the Commission
- 7 - Letter to PUCI from Developer
- 8 - Letter to PUCI from Developer

ATTACHMENT 1

LINDA LINGLE
GOVERNOR



STATE OF HAWAII
PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
465 S. KING STREET, #103
HONOLULU, HAWAII 96813

CARLITO P. CALIBOSO
CHAIRMAN

WAYNE H. KIMURA
COMMISSIONER

JANET E. KAWELO
COMMISSIONER

FILED
2004 NOV 15 A 11:35
PUBLIC UTILITIES
COMMISSION

October 6, 2004

Mr. James and Mrs. Patricia Berg
P.O. Box 223504
Princeville, Hawaii 96722

Dear Mr. and Mrs. Berg:

Re: Princeville Utilities Company, Inc. ("PUCI"), Informal Complaint. (IC-04-0122)

This responds to your informal written complaint of August 10, 2004 regarding a request for a \$12,707 "water meter fee waiver" refund from PUCI as they allegedly, violated an April 29, 1997 water service Agreement ("the Agreement"). Among other issues, you maintain that without properly amending the Agreement, PUCI could not legitimately, transfer the fee waiver from one lot to another.

On August 23, 2004, this office initiated an investigation into your complaint with PUCI. On August 31, 2004, PUCI responded by stating that there was no merit in the complaint and deferred the resolution of this matter to you, Mr. McGee, the previous owner of Lot 10A, as well as, other individuals involved in the sale of the property. PUCI's response to the Hawaii Public Utilities Commission ("Commission") is provided for your information as attached.¹ (Enclosed.)

Upon careful review of the information afforded in this complaint and PUCI's response, ~~it appears the Commission is unable to resolve this matter within the context of the informal complaint process.~~ Nevertheless, if you continue to

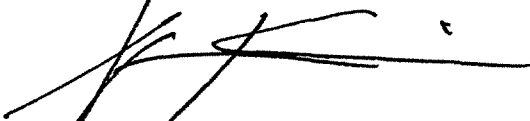
¹In a telephone conversation, on or about September 20, 2004, Mr. Dill confirmed that Footnote 2, on Page 2, of his August 31, 2004 letter to the Commission should properly read as follows: "Mr. Schmidt indicated that the Bergs are also trying to recover the CIAC credit from Coldwell Banker/Bali Hai Realty." (Emphasis added.)

Mr. James and Mrs. Patricia Berg
October 6, 2004
Page 2

believe that PUCI violated, among other things, laws, rules, regulations under our purview, you may file a formal complaint with the Commission, pursuant to Hawaii Administrative Rules, Title, 6, Chapter 61, Subchapter 5. These administrative rules may be viewed on our website at www.hawaii.gov/buget/puc.

Should you have any questions or concerns relating to this matter please, contact me by calling 808-274-3232 or fax at 808-274-3233, E-mail, nathan.kawakami@hawaii.gov, or write to me at the address listed below.

Sincerely,



Nathan Kawakami
Assistant – Kauai
Public Utilities Commission
P. O. Box 3078
Lihue, Hawaii 96766

NK:eh

Enclosure

c: PUCI (w/o enc.)
PUC – Honolulu (w/enc.)

August 10, 2004

Mr. Nathan Kawakami
Public Utilities Commission
P.O. Box 3078
Lihue, HI 96766

PUBLIC UTILITIES
COMMISSION

2004 NOV 15 A 11:35

FILED

Re: Water Meter Fee Waiver Assigned to Lot 10A, Anini Vista Subdivision

Dear Mr. Kawakami:

This is to inform you that by way of this letter, we are filing a formal complaint against Princeville Utilities Company, Inc. (PUCI) and are requesting a refund of \$12,707 from them. At issue is whether PUCI violated their April 27, 1997 Agreement (copy attached) regarding how PUCI would provide water service to Anini Vista Estates Subdivision. This document was recorded by the Bureau of Conveyances on May 2, 1997.

We have discussed this matter with PUCI a number of times in the last two or three weeks in an attempt to resolve our differences. Since we have been unable to reach an agreement, we are pursuing resolution of this matter through the HPUC.

In October 1999, we began negotiating for the purchase of Anini Vista Lot 10A and were told that it had a water meter fee waiver attached to it. We were told this by the seller's agent, the lawyer responsible for the subdivision and the contractor who had installed utilities for the subdivision. In addition, during escrow we were provided a copy of the Agreement referenced above between PUCI and the Landowner which confirmed that each lot (Nos. 1, 2, 4, 5, 7, 8, 9 and 10) was to have one Source Assessment Fee and one Storage Assessment Fee paid for by the Landowner as a Contribution In Aid to Construction (CIAC). We relied on this information as it was presented in the April 27, 1997, Agreement and confirmed our previous understanding.

However, on the basis of an October 4, 1999 letter (copy attached) to PUCI from the owner we were negotiating with, PUCI transferred the meter fee waiver from Lot 10A to Lot 5C. No formal documentation was filed to amend the April 27, 1997 Agreement. In fact, PUCI could not provide any internal or written documentation or correspondence related to making the transfer. We believe that since PUCI did not amend its Agreement prior to or concurrent with the transfer of the water meter fee waiver from Lot 10A to 5C, there was no way the change could be disclosed to potential buyers. Since PUCI's Agreement was recorded and in the public domain, they had a responsibility to amend and record any changes to the Agreement.

The Agreement clearly states that "the fee to PUCI (is) based upon one (1) allowable dwelling unit on each of the said lots". Further, the Agreement states that "the source assessment fee and storage assessment fee assessed herein by PUCI and to be paid by Landowner are calculated on the basis of providing water service to only (1) dwelling unit for each of said lots. This restriction shall run with the land.....".

When PUCI honored the owner of Lot 10A's request to transfer the water meter fee waiver, they violated their Agreement by allowing 2 waivers for Lot 5 and none for Lot 10. In discussing this with PUCI, they acknowledge this was highly unusual and they had never done it before. However, since this individual owned both lots, PUCI's attorney okayed

Page Two

Mr. Nathan Kawakami
August 10, 2004

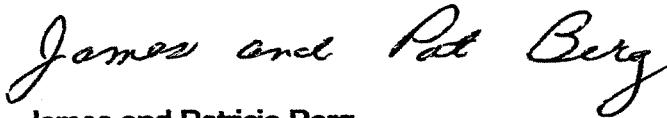
the transfer. In our opinion, this was done without regard to the legal and public document they had been a party to.

We are commencing construction on Lot 10A and only recently discovered that we had no water meter fee waiver when we contacted PUCI for installation of our meter and water service. Nevertheless, we paid the CIAC fee of \$12,707 (see statement attached) because we did not wish to incur any delays to our building process.

We believe that PUCI still owes Lot 10A its water meter fee waiver. We are asking you to help us resolve this situation with PUCI, as our attempts thusfar have been unsuccessful.

If you require any additional information, please let us know. Thank you for your attention to this matter.

Sincerely,



James and Patricia Berg
P.O. Box 223504
Princeville, HI 96722
(808)-826-7805

Attachments (3)

ATTACHMENT 3

R-287

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

MAY 02, 1997 08:02 AM

Doc No(s) 97-057327

/s/CARL T. WATANABE
ACTING
REGISTRAR OF CONVEYANCES

After Recordation, Return by: MAIL

Princeville Corporation
P.O. Box 3040
Princeville, Hawaii 96722

There are 5 pages in this document.

AGREEMENT

PRINCEVILLE UTILITIES COMPANY, INC.

ALVIN AWAYA, as Ancillary Personal Representative of
the Estate of Harry Weinberg, Deceased

ANINI VISTA ESTATES SUBDIVISION
TMK: 5-3-09:1, 2, 4, 5, 7, 8, 9 and 10

FILED
2004 NOV 15 A 11:35
PUBLIC UTILITIES
COMMISSION

AGREEMENT

This Agreement, made this 29th day of April, 1997, by and between PRINCEVILLE UTILITIES COMPANY, INC., whose post office address is P.O. Box 3040, Princeville, Hawaii, 96722 (hereinafter referred to as "PUCI"), and ALVIN AWAYA, as Ancillary Personal Representative of the Estate of Harry Weinberg, Deceased, whose post office address is 3660 Waialae Avenue, Suite 400, Honolulu, Hawaii, 96816 (hereinafter referred to as "Landowner").

WITNESSETH:

WHEREAS, PUCI is a utility company authorized by the Public Utilities Commission of the State of Hawaii to provide water service for lands in and around the Princeville area of Kauai;

WHEREAS, Landowner desires to have water service with respect to eight (8) lots; namely Lots 1, 2, 4, 5, 7, 8, 9, and 10, of that certain subdivision commonly known as Anini Vista Estates Subdivision in the Princeville area of Kauai, which lots are depicted on the map attached hereto as Exhibit "A" and by reference made a part hereof;

WHEREAS, PUCI is willing to provide such water service for those eight lots upon the terms and conditions more fully set forth herein; it being understood that Lot 3 already has water service.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

- Source Assessment Fees. As a condition for Princeville providing the water services to the eight lots referred to herein, Landowner shall pay a one-time source assessment fee of \$9,405 per dwelling unit, which is based upon 1,500 gallons of maximum water demand per dwelling unit per day on agricultural zoned land and that such source assessment fee for the said eight lots is the sum of \$75,240.
- Storage Assessment Fees. Landowner shall also pay a storage assessment fee to PUCI ~~based upon one (1) allowable dwelling unit on each of the said lots;~~ said storage assessment fee being \$1,500.00 per lot or \$12,000.00 for the said eight lots.
- Additional Water Service. ~~As a material condition of this Agreement, the parties understand and agree that the source assessment fee and storage assessment fee assessed herein by PUCI and to be paid by Landowner are calculated on the basis of providing water service to only one (1) dwelling unit~~

~~for each of said lots. This restriction shall run with the land and Landowner or its successor and assigns shall clearly note such restriction on all documents relative to the ownership, transfer, or assignment of said lots, including any deeds or related documents.~~ At such time as Landowner or its successors and assigns as to any of said lots (including the owner of Lot 3) (hereinafter referred to as "Applicant") requires additional water service to service more than one (1) dwelling unit per said lots, then such Applicant shall apply for such additional services with PUCI, and shall pay such additional charges for source assessment and storage assessment as are then applicable at such time. As a part of such application, the Applicant shall agree that the design and installation of additional distribution and service facilities with respect to the lots covered by such application shall be subject to the approval of PUCI pursuant to its rules and regulations as a utility company.

4. No Guarantee. Presently, the parties understand that PUCI cannot guarantee that water will be available at the time that Applicant may request water service for dwelling units over and above one (1) dwelling unit per lot, but that PUCI can only provide such amounts of water as may be available at such time.
5. Binding Agreement. This Agreement is binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed these presents as of the day and year first above written.

PRINCEVILLE UTILITIES COMPANY, INC.

By Michael Y.M. Loo
Michael Y.M. Loo
Its Vice President

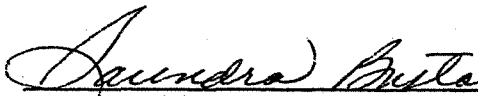
PUCI

Alvin Awaya
ALVIN AWAYA, as Personal Representative
of the Estate of Harry Weinberg, Deceased
Ancillary W N.P.
LANDOWNER

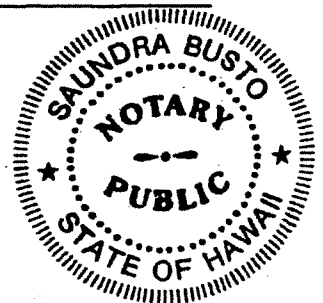
STATE OF HAWAII)
)
COUNTY OF KAUAI)

SS.

On this 25 day of April, 19 97, before me appeared MICHAEL Y.M. LOO, to me personally known, who being by me duly sworn, did say that he is the Vice President of PRINCEVILLE UTILITIES COMPANY, INC. a Hawaii corporation authorized to do business in the State of Hawaii, and that the seal affixed to the foregoing instrument is the seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.



Notary Public, State of Hawaii

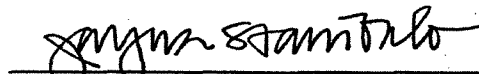


My commission expires: 12-9-97

STATE OF HAWAII)
)
CITY & COUNTY OF HONOLULU)

SS.

On this _____ day of APR 29 1997, 19_____, personally appeared ALVIN AWAYA, to me personally known, who, being by me duly sworn or affirmed did say that he executed the foregoing instrument as his own free act and deed, and in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Notary Public, State of Hawaii

My commission expires: JAN 30 2000

L.S.

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1114



A. ATTACHMENT 4

John McGee
P.O. Box 1256
Kilauea Hawaii 96754
Phone 808-828-6816

PUBLIC UTILITIES
COMMISSION

2004 NOV 15 A 11:35

FILED

Princeville Utilities Company, Inc.
P.O. Box 3040
Princeville Hawaii 96722

October 4, 1999

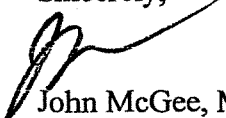
Re Water meter Anini Vista Lot 10A/5C

Dear Sirs:

Please transfer the water meter CIAC fee from Lot 10A to Lot 5C. I own both these properties but want the meter I have paid for for Lot 10A moved to Lot 5C.

Thank you for your help.

Sincerely,



John McGee, MD

Charge				
Ag	1 unit	1500 gals/unit/day	1,500	gpd
			\$7.27	per gpd
			\$10,905.00	
			162.8	CPI May 1998
			189.7	CPI Jun 2004
Water CIAC due:			\$12,707	

Mrs. Berg
 Anini Vista 10A
 As of: 08/04/04

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PUBLIC UTILITIES
COMMISSION



PRINCEVILLE UTILITIES COMPANY, INC.

August 31, 2004

Mr. Nathan Kawakami
Public Utilities Commission
State of Hawaii
P.O. Box 3078
Lihue, Hawaii 96766

Subject: Water Meter Fee Waiver Assigned to Lot 10 Unit A
Anini Vista Subdivision

Dear Mr. Kawakami:

This letter is in response to your transmittal dated August 23, 2004 concerning the informal complaint filed by James and Patricia Berg (the "Bergs"). The Bergs claim that Princeville Utilities Company, Inc. ("PUCI") violated an agreement when it permitted the transfer of the Contribution In Aid of Construction ("CIAC") credit from Anini Vista ("AV") lot 10 unit A to AV lot 5 unit C. As will be explained below, there is no merit to the Bergs' complaint.

On April 29, 1997, PUCI entered into an Agreement with the Weinberg Estate (the "Weinberg Agreement") which provided for the advance payment of Source and Storage Assessment Fees in return for water service for certain lots within the Anini Vista Subdivision. As indicated in items 1 and 2 of the Agreement, the total amount of the fee was determined based on one dwelling unit per lot, multiplied by the Source and Storage Assessment Fee of \$10,905 per dwelling unit.¹ Recognizing that these lots could be further subdivided or "condominiumized" in the future, Item 3 of the Agreement, Additional Water Service, provided that any additional services requested (beyond the 1 meter hookup per lot) would be subject to payment of additional charges to PUCI. Item 3 is the only portion of the Weinberg Agreement which is stated to be a "restriction which shall run with the land".

On November 10, 1998 PUCI received a letter from Mr. Stephen Long, developer of AV lots 8, 9 and 10, informing PUCI, among other things, that the CIAC credit provided for in the Weinberg Agreement for AV lot 10 would be assigned to AV lot 10 unit A. Similarly, on March 8, 1999 PUCI received a letter from Mr. John Berry, developer of AV lots 2, 4 and 5, assigning the CIAC 'credit' for AV lot 5 to AV lot 5 unit A. (Copies of these letters are attached.)

On October 4, 1999, PUCI received a letter from Mr. John McGee, then owner of AV lot 10 unit A and AV lot 5 unit C, requesting the transfer of the CIAC credit from lot 10 unit A to lot 5 unit C. Because the Weinberg Agreement contemplated that additional water hookups would be required as lots were condominiumized, a lot owner had the right to designate to which lot a CIAC credit would

¹ Based on Section XXVI of PUCI's tariff, the current CIAC amount is calculated to be \$12,687.

apply. Similar to the letters in the preceding paragraph, Mr. McGee's letter served as our documentation that the transfer was made.

As we later learned, Mr. McGee subsequently sold AV lot 10 unit A to the Bergs. We were contacted by Mrs. Patricia Berg in July of this year regarding the CIAC issue. As indicated in her August 10 letter to you, she contended that the transfer of the CIAC violated the Weinberg Agreement. She also indicated that she had a "representations issue" with the seller on the basis that she believed that the purchase of AV lot 10 unit A should have included the CIAC credit.

On August 18, 2004, we were contacted by Mr. Michael Schmidt of Coldwell Banker/Bali Hai Realty, who was Mr. McGee's representative in the sale of AV lot 10 unit A to the Bergs.² During my discussion with Mr. Schmidt, I learned that the Addendum to the DROA dated November 29, 1999 between Mr. McGee and the Bergs included a specific disclosure that the Bergs would need to pay PUCI \$10,905 to obtain water service. Mr. Schmidt faxed us a portion of the sales Addendum (see attached), which includes the statement "Buyer is aware, understands, and agrees a water meter is available from Princeville Utilities for \$10,905 installed."

Based on the disclosure in the Addendum, as well as the facts of this case, we believe that there is no merit to the Bergs' informal complaint. Any redress related to the CIAC credit must be between the Bergs and Mr. McGee and/or their respective sales agents since PUCI had no involvement in that transaction.

If you have any questions or if I can be of further assistance, please contact me at 826-3330.

Yours truly,


Larry Dill, P.E.
Manager

Enclosures

cc: Michael H. Lau, Esq.
Michael Y.M. Loo

² Mr. Schmidt indicated that the Bergs are also trying to recover the CIAC credit from Coldwell Banker/Bali Hai Realty.

ATTACHMENT 7

JK

2004 NOV 15 A 11:36

PUBLIC UTILITIES
COMMISSION

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November 10, 1998

Mr. Larry Dill
Princeville Corporation
PO Box 3069
Princeville, Hawaii 96722

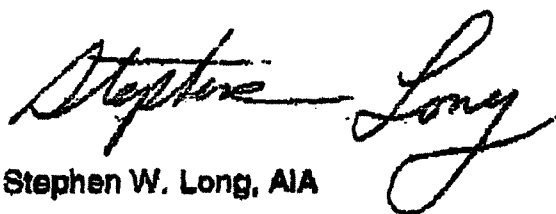
**RE: Assignment of 'without cost' Water Meters for
Lots 8, 9 & 10 at Anini Vista Subdivision**

Dear Larry,

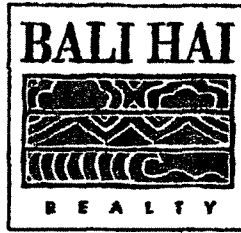
This letter is to inform you that as the developer of Lots 8, 9 & 10 at Anini Vista Subdivision, the 'without fee' water meters will be assigned to Lot 8A, Lot 9C and Lot 10A.

If you have any questions, please feel free to contact me.

Aloha,


Stephen W. Long, AIA

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MAR - 9 1999
PRINCEVILLE CORPORATION

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2004 NOV 15 A 11:36
PUBLIC UTILITIES
COMMISSION

March 8, 1999

Mr. Larry Dill, Manager
Princeville Utilities Company, Inc.
P.O. Box 3040
Princeville, Hawaii 96722

Re: CIAC for Lots 2, 4, and 5, Anini Vista

Dear Larry,

In regards to the CIAC for Lots 2, 4, and 5 at Anini Vista, the water meters which Weinberg paid for are to be designated to Lots 2-D, 4-D, and 5-A.

Please call if you have any further questions.

Sincerely,

John C. Ferry, R.
President